IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4946 OF 2004

Suresh Sunder Shetty .. Appplicant

Versus

State of Maharashtra .. Respondent

Mr.Amol Patankar i/b. Ganesh Gole for applicant

Mr.U.V. Nikam, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 31st August 2006.

P.C.

. Heard Mr.Gole for applicant and Mr.Jain for respondent No.2 original complainant.

2. The only contention raised by Mr.Gole in

support of his prayer for quashing the proceedings before Metropolitan Magistrate is that in the complaint, the complainant has not stated that notice was issued calling upon the applicant to pay the amount of dishonoured cheque within the time stipulated therein failing which he would proceed and file a complaint alleging offence punishable under the Negotiable Instruments Act.

3. For considering the submissions I have with the assistance of Mr.Gole and Mr.Jain perused the complaint. In the complaint apart from stating that the notice was sent, all that is further stated is that the mode of despatch of notice was under certificate of posting. Application proceeds on the basis that the complainant himself is in doubt as to whether the notice has been received or not and, therefore, no offence is made out and hence proceedings be quashed.

4. After the complaint is perused as a whole, I have no manner of doubt that it prima facie discloses commission of offence under section 138 of Negotiable Instruments Act and more particularly because the complaint is read in isolation and that too by referring to para 3, it cannot be said that no offence is made out against the applicant under the aforesaid provision. If, at the stage of trial, after all materials are produced, it is demonstrated that the applicant indeed had no notice at all, needless to state that the learned Judge would be free to acquit the applicant - accused. At this stage, it is not possible to consider the request of the applicant to quash the proceedings based as it is on whether the notice was actually received and on what date. That issue can always be decided when evidence is led.

5. No case is, therefore, made out to invoke

jurisdiction under section 482 of Cr.P.C. Application dismissed. However, dismissal of this application shall not prevent the applicant from raising all contentions as are permissible in law and for the trial court to consider them and pass appropriate orders.

6. Apprehension of Mr.Gole that the observations in this order would influence the trial court is without any substance because they are made only for the purpose of considering as to whether the complaint, read as a whole, discloses, prima facie, any commission of offence. It is only for the purpose of deciding this application and can never influence the trial court while passing orders on merits and in accordance with law.

(S.C.Dharmadhikari, J)